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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 456

**UNIVERSAL INSURANCE COMPANY AND UNIVER-
SAL INDEMNITY INSURANCE COMPANY, APPEL-
LANTS,**

vs.

**STATE BOARD OF TAX APPEALS OF THE STATE
OF NEW JERSEY AND THE CITY OF NEWARK**

**APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY**

FILED NOVEMBER 2, 1938.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 456

UNIVERSAL INSURANCE COMPANY AND UNIVER-
SAL INDEMNITY INSURANCE COMPANY, APPEL-
LANTS,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE
OF NEW JERSEY AND THE CITY OF NEWARK

APPEAL FROM THE COURT OF ERRORS AND APPEALS OF THE STATE
OF NEW JERSEY

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[fol. 1] THE ESSEX COUNTY BOARD OF TAXATION

In the Matter of the Appeal of **UNIVERSAL INSURANCE COMPANY** from the Assessment of Property in The City of Newark, County of Essex, for the year 1935

JUDGMENT

An appeal in writing having been filed with the Essex County Board of Taxation, duly verified according to rules of practice prescribed by said Board, by Universal Insurance Company, 51 Clinton Street, Newark, New Jersey, in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1935, located at Newark in the County of Essex, consisting of personally located at 51 Clinton street.

After hearing evidence produced on the part of said complainant, and the argument of Jeremiah F. Hoover for the complainant, and John A. Matthews for the City of Newark and after considering the same, it is on this eighth day of November nineteen hundred and thirty-five, at a session of the Essex County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of \$500,000 be reduced to \$455,400.

[fol. 2] And it is Further Ordered, That this order be certified to the Collector of the City of Newark, County of Essex.

Max Drill, William F. Kearney, J. William Huegel,
Essex County Board of Taxation.

Attest: William P. Macksey, Secretary.

[fol. 3] IN SUPREME COURT OF NEW JERSEY

WRIT OF CERTIORARI

STATE OF NEW JERSEY, ss:

(L. S.)

The State of New Jersey to State Board of Tax Appeals of the State of New Jersey, Francis D. Weaver, President, George Compton, Mahlon R. Margerum, Thelma A. Parkinson, David R. Smith, Alex F. Berg and Hervey S. Moore, Members of the State Board of Tax Appeals; and City of Newark, County of Essex, Greeting:

We being willing, for certain reasons appearing by the affidavits presented on this application, to be certified of

a certain judgment rendered on July 28, 1936, by the State Board of Tax Appeals, upon the appeal of the Universal Insurance Company, from a judgment of the Essex County Board of Taxation entered on the 8th day of November, 1935, upon an assessment for taxation for the year 1935 made by the City of Newark, upon certain personal property of the Universal Insurance Company alleged to be located in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and listed as personal property located at 31 Clinton street, Newark, N. J., to wit, the capital stock and accumulated surplus of the said company, Do Command You that you certify and send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the 18th day of December, 1936, the said judgment of said State Board of Tax Appeals, filed July 28, 1936, together with all things touching and concerning the same, including all proceedings upon an application for re-hearing and the order denying same, as fully and completely as they remain before you, together with this, our writ; that we may cause to be done thereupon what [fol. 4] of right and justice and according to the laws of the State of New Jersey ought to be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 28th day of November in the year of our Lord, One Thousand Nine Hundred and Thirty-Six.

Fred L. Bloodgood, Clerk.

Child, Biker, Marsh & Shipman, Attorneys for Prosecutor.

ALLOCATUR

The within writ is allowed this 28th day of November, 1936.

Let it be sealed.

Charles W. Parker, S. C. J.

[fol. 5] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

RETURN TO WRIT

On Certiorari

The State Board of Tax Appeals doth herewith send to the Supreme Court of the State of New Jersey the petition, judgment and proceedings in the matter of the appeal of Universal Insurance Company, from the assessment of property located in the City of Newark, for the year 1935, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

State Board of Tax Appeals, by Chas. E. Cook.
(Seal.)

[fol. 6] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of the Application of UNIVERSAL INSURANCE COMPANY, a Corporation of the State of New Jersey, for the Cancellation of the Tax Assessment for the year 1935 on its Property Alleged to be Situate in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and on the Full Amount of Its Capital Stock Paid in and Accumulated Surplus

PETITION—Filed December 14, 1935

To the State Board of Tax Appeals:

Your petitioner, Universal Insurance Company, a fire insurance company, incorporated under the laws of the State of New Jersey, and having its registered office in New Jersey at 810 Broad street, in the City of Newark, County of Essex and State of New Jersey, respectfully shows:

That petitioner is taxable under Chapter 236, Section 307 of the Laws of 1918, as a fire insurance company, in the taxing district where its office is situate, upon the full

amount of its capital stock paid in and accumulated surplus; that the main office of petitioner was on October 1, 1934 and now is situated at 111 John street, in the City of New York, County and State of New York, and not in the [fol. 7] taxing district of the City of Newark, Essex County, New Jersey; that petitioner did maintain on October 1, 1934, a local underwriting department at No. 51 Clinton street, in the City of Newark, Essex County, New Jersey, but the business conducted in said local office was subject to confirmation at the main office of your petitioner in New York City.

Petitioner alleges that all of its personal property, constituting the full amount of its capital stock paid in and accumulated surplus had on October 1, 1934, and now has its business situs at the main business office of petitioner in the City of New York and not within the taxing district of the City of Newark. The executive offices and officers were located there, all the books of the company were kept there and all insurance contracts written by the underwriting department in New Jersey must be confirmed at the main office. All accounts and bills are collected and paid from the main office, including salaries. All the bank accounts of the company were kept in New York banks, with the exception of one bank account kept in the National Newark & Essex Banking Company in the City of Newark; all securities are kept in New York City, with the exception of securities of the par value of \$60,000.00 in the form of United States Government bonds which were on October 1, 1934 and now are on deposit with the Commissioner of Banking and Insurance of the State of New Jersey, in order that the company might transact business in New Jersey.

Petitioner has been assessed for the purposes of taxation for the year 1935, upon property alleged to be located at 51 Clinton street, Newark, Essex County, New Jersey, and upon the full amount of its capital stock paid in and accumulated surplus, in the sum of \$500,000.00, at which assessment petitioner is aggrieved, because petitioner can be assessed only in the taxing district where its main office is situated, and the main office of the petitioner was not situated in the taxing district of the City of Newark on October 1, 1934 and because all of the personal property of the petitioner constituting and making up the full amount of its capital stock paid in and accumulated surplus as of October 1, 1934, had its business situs at the main office of the com-

pany, 111 John street, New York City, and not within the taxing district of the City of Newark. Said assessment should, therefore, be cancelled.

Petitioner is further aggrieved because the said assessment is in excess of the true value of the company's capital stock paid in and accumulated surplus, for the following reasons:

First. In arriving at the full amount of the capital stock paid in and accumulated surplus, the tax assessor included the unearned premium reserve as a taxable asset, whereas, the said unearned premium reserve should be deducted as a non-taxable liability.

Second. The said assessor likewise included as a taxable asset in determining the capital stock paid in and accumulated surplus, certain agency balances due to the company from its agents located in other states than the State of New Jersey, upon all of which balances and accounts taxes have been actually assessed and paid within twelve months next before October 1, 1934.

Third. The said assessor included as a taxable asset in determining the capital stock paid in and accumulated surplus [fol. 9] plus, the amount of cash on hand and in banks which the company had in its possession on October 1, 1934, which said cash was specifically exempted by Section 203 of Article 2, Paragraph 9, of Chapter 165 of the Laws of 1933.

Petitioner, therefore, alleges that, if all said proper and legal exemptions and deductions had been allowed, that the company would have had no legally taxable capital stock paid in and accumulated surplus.

That an appeal from the said assessment has been filed with the Essex County Board of Taxation, and upon the hearing of said appeal the attorney appearing for petitioner allegedly agreed with the attorney for the City of Newark, without the knowledge or consent of petitioner, to an assessment in the amount of \$455,400.00, and that judgment be entered for that amount; that your petitioner, upon learning of such alleged agreement, immediately, through its present counsel and upon notice to the City of Newark, made application to the said Essex County Board of Taxation for leave to withdraw the alleged agreement and any judgment entered thereon, and to proceed with the appeal, petitioner at all times having contended that the business situs of the

property was not within the jurisdiction of the City of Newark; that the said application of petitioner was denied and the appeal was disposed of as follows:

The assessment of \$500,000.00 be reduced to \$455,400.00.

Petitioner, therefore, prays that for the reasons herein set forth, the entire assessment made against the company's [fol. 10] property and its capital stock paid in and accumulated surplus, be cancelled.

Dated December 11, 1935.

Universal Insurance Company, by Harry Bird, Vice-President. (Seal.)

Duly sworn to by Harry Bird. Jurat omitted in printing.

[fol. 11] STATE OF NEW JERSEY,
County of Essex, ss:

Edward G. Slingerland, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Frank A. Beettner (Attorney) of City of Newark (name of taxing district), personally, this 12th day of December, 1935.

Edward G. Slingerland.

Sworn and subscribed before me, this 12th day of December, 1935. Samuel P. Watson, Notary Public of New Jersey. (Seal.)

STATE OF NEW JERSEY,
County of Essex, ss:

Edward G. Slingerland, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on William P. Macksey (Secretary) of the Essex County Board of Taxation, personally, this 12th day of December, 1935.

Edward G. Slingerland.

Sworn and subscribed before me, this 12th day of December, 1935. Samuel P. Watson, Notary Public of New Jersey. (Seal.)

[fol. 12]

EXHIBIT P. 1

STATE BOARD OF TAX APPEALS

In the Matter of the Application of **UNIVERSAL INSURANCE COMPANY**, a Corporation of the State of New Jersey, for Cancellation of the Tax Assessment for the year 1935 on Its Property Alleged to be Situate in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and on the full amount of its Capital Stock paid in and Accumulated Surplus.

STIPULATION

It is hereby stipulated and agreed between the attorneys for the petitioner and the attorneys for the City of Newark, as follows:

The Universal Insurance Company is a corporation organized under the laws of the State of New Jersey, and on October 1st, 1934, the registered office was at #810 Broad Street, Newark, New Jersey. The figures constituting and making up the assessment as determined by the Essex County Board of Taxation are:

[fol. 13]

Taxable assets:

Capital Stock.....	\$400,000.00
Accumulated surplus as of September 30, 1934.....	838,682.39
Unearned premium reserved.....	336,725.77
Agency balances due.....	9,434.71
Total.....	\$1,584,842.87

Exemptions allowed by law:

Bonds of U. S. Government—Value as of September 30, 1934.....	\$110,290.00	
Bonds of municipalities of State of N. J.—Value as of Sept. 30, 1934.....	33,081.00	
Stocks of corporations not incorporated, under laws of State of N. J.—Value as of Sept. 30, 1934.....	470,704.00	
Stocks of corporations of the State of N. J.—Value as of Sept. 30, 1934.....	515,375.92	1,129,450.92
Balance.....		\$455,991.95

It is further stipulated and agreed that:

Cash on hand and on deposit as of Sept. 30, 1934, amounts to.....	\$240,828.89
Bonds secured on property located and taxed in the State of New Jersey—Value as of Sept. 30, 1934.....	15,689.00

Child, Riker, Marsh & Shipman, Attorneys for Appellant. Jno. A. Matthews, Attorney for Respondent.

(fol. 14)

EXHIBIT P. 2

Universal Insurance Company

Statement of Condition September 30, 1934

Amount of Capital paid in Cash

		\$400,000.00
Ledges Assets Dec. 31, 1933		
Premiums less Returns & Reins.		3,655,468.96
Interest and Dividends	\$896,365.73	
Increase in liabilities account Reinsurance	115,762.09	
Treaties		
Total Income	20,745.54	
		1,032,873.36
Disbursements		\$4,688,342.32
Losses paid less reins.		
Commissions expenses and taxes	\$467,797.18	
Loss from sales of securities	460,728.02	
Borrowed money repaid	6,229.78	
Total Disbursements	249,631.79	
Total Ledger Assets		1,184,386.77
		3,503,955.55
Ledger Assets		
Book value of investments	\$3,189,018.84	
Cash in Bank	240,828.89	
Agents Balances	96,657.18	
Reinsurance Recoveries	29,899.36	
Deposits with Boards	7,350.00	
Accrued Interest		3,503,955.55
Non-Ledger Assets		
Gross Assets		15,647.88
		3,519,603.43
Non-Admitted Assets		
Agents Balances over 90 days		
Book value of Bonds and Stocks over market value	\$9,434.71	
Total Admitted Assets	916,125.92	
		925,560.63
		2,594,042.80
Liabilities		
Reserve for outstanding losses	\$247,681.22	
Reserve for unearned premiums	336,725.77	
Reserve for salaries, rents and exp.	30,000.00	
Funds held under Reins. Treaties	160,156.97	
Due for borrowed money	580,796.45	
Capital	1,355,360.41	
Total Liabilities	400,000.00	
Surplus		1,755,360.41
		838,682.39
		\$2,594,042.80

[fol. 15] BEFORE STATE BOARD OF TAX APPEALS

UNIVERSAL INSURANCE COMPANY, Appellant,

v.

CITY OF NEWARK, Respondent

UNIVERSAL INDEMNITY INSURANCE COMPANY, Appellant,

v.

CITY OF NEWARK, Respondent

In the matter of the applications for cancellation, and in the alternative, for reduction of personal property tax upon capital stock and accumulated surplus of Universal Insurance Company and Universal Indemnity Insurance Company, New Jersey corporations claiming to have business situs in New York.

Appearances:

For appellants, Child, Riker, Marsh & Shipman, Esqs., by Jehiel G. Shipman, Esq.

For respondent, Frank A. Boettner, Esq., by John A. Matthews, Esq.

OPINION—Filed July 28, 1936

WEAVER, President:

These two appeals, presenting common questions of law and fact, were tried together. Both corporations are man- [fol. 16] aged by the same officers, operate from the same offices, and are represented by the same counsel. They are New Jersey corporations, maintaining registered offices at Newark, New Jersey, and business offices in New York City, managed and conducted by a New York corporation, Talbot, Bird & Company, Incorporated. With minor exceptions, all of their assets are kept in the State of New York.

The Board of Assessors of the City of Newark levied personal property assessments based upon their paid in capital and accumulated surplus. On appeal to the Essex County Board of Taxation, judgments reducing the assessments were entered by consent of the parties. Appellants seek to

have these assessments cancelled, or, in the alternative, reduced upon the following grounds:

(1) The Company is not taxable in New Jersey because its business situs is in New York.

(2) (a) That reserves for unearned premiums, and (b) reserves for agency balances over ninety days old, should not be included in the capital and accumulated surplus, thereby reducing the capital and accumulated surplus by the amounts represented by said items, and that after the deduction of property claimed to be exempt, no taxable capital or accumulated surplus remains.

(3) That cash on hand or on deposit is exempt, and should be deducted from the taxable capital and accumulated surplus.

Appellants are taxable under Section 307 of the General Tax Act, P. L. 1918, p. 858.

[fol. 17] The questions herein presented were reviewed at length by this Board in an opinion filed July 7, 1936, in the case of Newark Fire Insurance Company v. City of Newark, wherein it was held that the establishment of a permanent business situs in another State does not preclude the taxation of intangible personal property of a domestic corporation of this State; that reserves for unearned premiums and agency balances cannot be deducted from accumulated surplus; and that cash on hand or on deposit is exempt from taxation.

Stipulations of fact and financial statements of the companies were offered in evidence, from which it appears that in the Universal Insurance Company judgment entered by the County Board the following items were deducted from the assets in determining the accumulated surplus:

Reserve for outstanding losses	\$247,681.22
Book value of bonds and stocks over market value	916,125.92

Neither of these items is deductible from the assets in determining the accumulated surplus. See opinions of the Board in City of Newark v. Commercial Casualty Insurance Company and New Jersey Insurance Company v. City of Newark, filed July 14, 1936. The stipulations before this Board are to the effect that these items are deductible.

While parties may stipulate facts, they cannot stipulate matters of law. The question whether these items are deductible from the assets in determining the amount of accumulated surplus is a question of law.

The taxable capital paid in and accumulated surplus of the Universal Insurance Company is in excess of the assessment as made by the Board of Assessors of the City of [fol. 18] Newark, and under ordinary circumstances we would be required to restore the assessment as made by the Board of Assessors. However, we are without jurisdiction to change the judgment of the Essex County Board of Taxation, because it was entered by consent of the parties.

In *Borough of Kenilworth v. Board of Equalization of Taxes*, 78 N. J. L. 302; 72 A. 966, our Supreme Court said:

"The difficulty, however, with the appeal is that there was no controversy before the county board to review, for the record here shows that the assessor's assessment was presented to the county board, and there, after full consideration, ratified and confirmed with the consent of the borough officials. Having thus consented to the confirmation of its own assessment by the county board, it is not perceived how the petitioner can be said to be 'aggrieved,' or that 'any controversy' can be said to exist which can be the subject-matter for determination by the state board."

The same situation exists with respect to the appeal of the Universal Indemnity Insurance Company, except as to the amounts involved.

For the reasons stated, the appeals are dismissed.

[fol. 19] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of Appeal of UNIVERSAL INSURANCE COMPANY from the Assessment of Property in City of Newark, County of Essex, for the year 1935

JUDGMENT—Filed July 28, 1936

An appeal in writing having been filed with the State Board of Tax Appeals, duly verified according to the rules of practice prescribed by said Board, by Universal Insurance Company in which it is alleged that an injustice has

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been done the said complainant by the assessment of certain property for taxation for the year 1935, located at City of Newark in the County of Essex consisting of personalty located at 51 Clinton street and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of Child, Riker, Marsh and Shipman, attorneys, by Jehiel G. Shipman, attorney for the complainant, and John A. Matthews, attorney for the City of Newark and after considering the same, it is on this Twenty-eighth day of July, nineteen hundred and thirty-six, at a session of the State Board of Tax Appeals, Ordered, Adjudged and Decreed, under and by virtue of the authority conferred by law, that the [fols. 20-41] assessment of \$455,400 on personalty, as reduced by the County Board of Taxation from \$500,000, levied for the year 1935 on the above described property, be affirmed and the appeal therefrom dismissed.

F. D. Weaver, President. M. R. Margerum, George Compton, David R. Smith, State Board of Tax Appeals.

Attest: Chas. E. Cook, Secretary.

[fol. 42] BEFORE STATE BOARD OF TAX APPEALS

49873

UNIVERSAL INSURANCE COMPANY, Petitioner,

VS.

CITY OF NEWARK, CO. OF ESSEX, Respondent

Assessment of 1935

DOCKET ENTRIES

Property: Personalty located at 51 Clinton Street.

Amount, \$455,400 Judgment, \$

L.

L.

B.

B.

P. 455,400

P.

1935.

Dec. 14. Petition filed.

1936.

March 31. Hearing fixed for April 28th at Trenton and notice sent.

DOCKET ENTRIES—Continued

April 28. Case heard. Briefs to be filed.
 July 28. Memorandum filed.
 July 28. Judgment entered, dismissing appeal.
 Sept. 8. Application by counsel for petitioner to reopen judgment.
 Nov. 10. Application denied. Memorandum filed.

[fol. 43] **BEFORE STATE BOARD OF TAX APPEALS**

MINUTES OF BOARD

State House, Trenton, New Jersey,
 Tuesday, March 31, 1936.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Compton, Margerum, Parkinson and Smith.

The Board fixed the following dates for hearing appeals:

Tuesday, April 28th: State House, Trenton, 5 Essex Co. cases. (Newark.)

State House, Trenton, New Jersey,
 Tuesday, April 28, 1936.

The Board met at 10:30 A. M., Advanced Time, on the above date.

Present, President Weaver, Commissioners Compton, Margerum, Parkinson and Smith.

The following calendar of appeals was called:

7. Universal Indemnity Insurance Company vs. City of Newark.

8. Universal Insurance Company vs. City of Newark.

These cases were heard jointly, Mr. Jehiel G. Shipman, of the firm of Child, Riker, Marsh and Shipman, appearing

for the petitioners and Mr. John A. Matthews, Special Counsel, appearing for the City of Newark.

[fol. 44] The Board heard the testimony of John T. Byrne on behalf of the petitioners, and reserved decision pending the filing of briefs.

.
State House, Trenton, New Jersey,
Tuesday, July 28, 1936.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Compton, Margerum, Parkinson, Smith, Berg and Moore.

.

President Weaver, Commissioners Margerum, Compton, Parkinson and Smith took up for consideration cases heard and awaiting decision and, after reviewing the evidence produced, ordered, judgments entered as follows:

Universal Indemnity Insurance Company vs. City of Newark. That the assessment of \$381,224 on personalty, as reduced by the County Board of Taxation from \$500,000, levied for the year 1935 on personalty located at No. 51 Clinton Street, be affirmed and the appeal therefrom dismissed.

A memorandum was filed in this case, setting forth the grounds for the conclusions reached.

Universal Insurance Company vs. City of Newark. That the assessment of \$455,409 on personalty, as reduced by the County Board of Taxation from \$500,000, levied for the year 1935 on personalty located at No. 51 Clinton Street, be affirmed and the appeal therefrom dismissed.

A memorandum was filed in this case, setting forth the grounds for the conclusions reached.

.

[fol. 45]: State House, Trenton, New Jersey,
Tuesday, September 8, 1936.

The Board met at 10:30 A. M. on the above date.

Present, President Weaver, Commissioners Margerum, Parkinson, Smith, Berg and Moore. Absent, Commissioner Compton.

.

Mr. Jehiel G. Shipman, on behalf of the petitioners, appeared before the Board and moved for the reopening of the judgments entered in the matter of the appeals of Universal Insurance Company and Universal Indemnity Insurance Co. vs. City of Newark, which appeals were dismissed on July 28, 1936, Mr. Andrew B. Crummy appeared on behalf of the City of Newark to oppose the granting of the motion. Mr. Shipman was instructed by the Board to file a petition verified by affidavit setting forth the grounds for the motion, which Mr. Crummy will have an opportunity to answer.

State House, Trenton, New Jersey,
Tuesday, November 10, 1936.

The Board met at 10:30 A. M. on the above date.
Present, President Weaver, Commissioners Compton, Margerum, Parkinson, Smith, Berg and Moore.

The Board took up for consideration the applications of Jehiel G. Shipman, counsel for the petitioners, for the reopening of the judgments entered in the matter of the [fol. 46] appeals of the Universal Insurance Co. vs. City of Newark and Universal Indemnity Insurance Co. vs. City of Newark. The applications were denied. A memorandum was filed by the Board setting forth the reasons for the dismissal of the applications.

BEFORE STATE BOARD OF TAX APPEALS

CERTIFICATE OF SECRETARY

I, Chas. E. Cook, Secretary of the State Board of Tax Appeals, do Hereby Certify, that the foregoing are true copies of the petition, judgment and proceedings in the matter of the appeal of Universal Insurance Company, from the assessment of property in the City of Newark County of Essex for the year 1935, as the same are taken from and compared with the originals, filed in the office of

the State Board of Tax Appeals, on the fourteenth day of December and other dates, A. D. 1935 and 1936, and now remaining on file and of record there.

In Testimony Whereof, I have hereunto set my hand and affixed the official seal of the Board, at Trenton this eighteenth day of December, A. D. 1936.

Chas. E. Cook, Secretary. (Seal.)

[fol. 47] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

RULE FOR DEPOSITIONS

A writ of certiorari having been allowed in the above entitled case to review the judgment rendered by the State Board of Tax Appeals, filed on July 28, 1936, and application now being made by the prosecutor;

It is on this 30th day of November, 1936, Ordered that the parties hereto shall have leave to take depositions and testimony before a Supreme Court Commissioner on four days' notice, and that such depositions shall be used, together with the exhibits, as part of the record on the return and argument of the above cause.

Let this rule be entered.

Charles W. Parker, S. C. J.

[fol. 48] THE ESSEX COUNTY BOARD OF TAXATION

In the Matter of the Appeal of UNIVERSAL INDEMNITY INSURANCE COMPANY from the Assessment of Property in the City of Newark, County of Essex, for the Year 1935

JUDGMENT

An appeal in writing having been filed with the Essex County Board of Taxation, duly verified according to rules of practice prescribed by said Board, by Universal Indem-

nity Insurance Company, 51 Clinton Street, Newark, New Jersey in which it is alleged that an injustice has been done the said complainant by the assessment of its property for taxation for the year 1935, located at Newark in the County of Essex, consisting of personaity located at 51 Clinton Street;

After hearing evidence produced on the part of said complainant, and the argument of Jeremiah F. Hoover for the complainant, and John A. Matthews for the City of Newark and after considering the same, it is on this eighth day of November nineteen hundred and thirty-five, at a session of the Essex County Board of Taxation, Ordered, Adjudged and Decreed, under and by virtue of Chapter 120 of the Laws of 1906, that the assessment of \$500,000. be reduced to \$381,224.

[fol. 49] And it is Further Ordered, That this order be certified to the Collector of the City of Newark, County of Essex:

Max Drill, William F. Kearney, J. William Huegel,
Essex County Board of Taxation.

Attest: William P. Macksey, Secretary.

[fol. 50] IN SUPREME COURT OF NEW JERSEY

WRIT OF CERTIORARI

STATE OF NEW JERSEY, ss:

(L. S.)

The State of New Jersey to State Board of Tax Appeals of the State of New Jersey, Francis D. Weaver, president, George Compton, Mahlon R. Margerum, Thelma A. Parkinson, David R. Smith, Alex F. Berg and Hervey S. Moore, Members of the State Board of Tax Appeals; and City of Newark, County of Essex, Greeting:

We being willing, for certain reasons appearing by the affidavits presented on this application, to be certified of a certain judgment rendered on July 28, 1936, by the State Board of Tax Appeals, upon the appeal of the Universal Indemnity Insurance Company, from a judgment of the Essex County Board of Taxation entered on the 8th day of November, 1935, upon an assessment for taxation for the year 1935 made by the City of Newark, upon certain per-

sonal property of the Universal Indemnity Insurance Company alleged to be located in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and listed as personal property located at 31 Clinton Street, Newark, N. J., to wit, the capital stock and accumulated surplus of the said company, Do Command You that you certify and send, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the 18th day of December, 1936, the said judgment of said State Board of Tax Appeals, filed July 28, 1936, together with all things touching and concerning the same, including all proceedings upon an application for re-hearing and the order denying same, as fully and completely as they remain before you, together [fol. 51] with this, our writ; that we may cause to be done thereupon what of right and justice and according to the laws of the State of New Jersey ought to be done.

Witness, Thomas J. Brogan, Esquire, Chief Justice of our Supreme Court, at Trenton, this 28th day of November, in the year of our Lord, One Thousand Nine Hundred and Thirty-Six.

Fred L. Bloodgood, Clerk.

Child, Riker, Marsh & Shipman, Attorneys for Prosecutor.

ALLOCATUR

The within writ is allowed this 28th day of November, 1936.

Let it be sealed.

Charles W. Parker, S. C. J.

[fol. 52] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

On Certiorari

RETURN TO WRIT

The State Board of Tax Appeals doth herewith send to the Supreme Court of the State of New Jersey the petition,

judgment and proceedings in the matter of the appeal of Universal Indemnity Insurance Company, from the assessment of property located in the City of Newark, for the year 1935, as within it is commanded, as by the transcript under the seal of said Board hereto annexed more fully appears.

State Board of Tax Appeals, by Chas. E. Cook, Secretary. (Seal.)

[fol. 53] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of the Application of UNIVERSAL INDEMNITY INSURANCE COMPANY, a Corporation of the State of New Jersey, for the Cancellation of the Tax Assessment for the Year 1935 on Its Property Alleged to be Situate in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and on the Full Amount of Its Capital Stock Paid in and Accumulated Surplus

PETITION

To the State Board of Tax Appeals:

Your petitioner, Universal Indemnity Insurance Company, a stock insurance company other than life insurance company, incorporated under the laws of the State of New Jersey, and having its registered office in New Jersey at 810 Broad street, in the City of Newark, County of Essex and State of New Jersey, respectfully shows:

That petitioner is taxable under Chapter 236 Section 307 of the Laws of 1918, as a stock insurance company other than life insurance company, in the taxing district where its office is situate, upon the full amount of its capital stock paid in and accumulated surplus; that the main office of petitioner was on October 1, 1934 and now is situated at 111 John street, in the City of New York, County and State of New York, and not in the taxing district of the City of Newark, Essex County, New Jersey; that petitioner maintained on [fol. 54] October 1, 1934 a local underwriting department at No. 51 Clinton street, in the City of Newark, Essex County, New Jersey, but the business conducted in said local office was subject to confirmation at the main office of your petitioner in New York City.

Petitioner alleges that all of its personal property, constituting the full amount of its capital stock paid in and accumulated surplus had on October 1, 1934 and now has its business situs at the main business office of petitioner in the City of New York and not within the taxing district of the City of Newark. The executive offices and officers were located there, all the books of the company were kept there and all insurance contracts written by the underwriting department in New Jersey must be confirmed at the main office. All accounts and bills are collected and paid from the main office, including salaries. All the bank accounts of the company were kept in New York banks; all securities are kept in New York City, with the exception of securities of the par value of \$205,000.00 in the form of New York and New Jersey Municipal bonds which were on October 1, 1934 and now are on deposit with the Commissioner of Banking and Insurance of the State of New Jersey, in order that the company might transact business in New Jersey.

Petitioner has been assessed for the purposes of taxation for the year 1935, upon property alleged to be located at 51 Clinton street, Newark, Essex County, New Jersey, and upon the full amount of its capital stock paid in and accumulated surplus, in the sum of \$500,000.00, at which assessment petitioner is aggrieved, because petitioner can be assessed only in the taxing district where its main office [fol. 55] is situated, and the main office of the petitioner was not situated in the taxing district of the City of Newark on October 1, 1934 and because all of the personal property of the petitioner constituting and making up the full amount of its capital stock paid in and accumulated surplus as of October 1, 1934, had its business situs at the main office of the company, 111 John street, New York City, and not within the taxing district of the City of Newark. Said assessment should, therefore, be cancelled.

Petitioner is further aggrieved because the said assessment is in excess of the true value of the company's capital stock paid in and accumulated surplus for the following reasons:

First. In arriving at the full amount of the capital stock paid in and accumulated surplus, the tax assessor included the unearned premium reserve as a taxable asset, whereas, the said unearned premium reserve should be deducted as a non-taxable liability.

Second. The said assessor likewise included as a taxable asset in determining the capital stock paid in and accumulated surplus, certain agency balances due to the company from its agents located in other states than the State of New Jersey, upon all of which balances and accounts taxes have been actually assessed and paid within twelve months next before October 1, 1934.

Third. The said assessor included as a taxable asset in determining the capital stock paid in and accumulated surplus, the amount of cash on hand and in banks which the company had in its possession on October 1, 1934, which said cash was specifically exempted by Section 203 of Article 2, Paragraph 9 of Chapter 165 of the Laws of 1933.

[fol. 56] Petitioner, therefore, alleges that if all said proper and legal exemptions and deductions had been allowed, that the company would have had no legally taxable capital stock paid in and accumulated surplus.

That an appeal from the said assessment has been filed with the Essex County Board of Taxation, and upon the hearing of said appeal the attorney appearing for petitioner allegedly agreed with the attorney for the City of Newark, without the knowledge or consent of petitioner, to an assessment in the amount of \$381,224.00, and that judgment be entered for that amount; that your petitioner, upon learning of such alleged agreement, immediately, through its present counsel and upon notice to the City of Newark, made application to the said Essex County Board of Taxation for leave to withdraw the alleged agreement and any judgment entered thereon, and to proceed with the appeal, petitioner at all times having contended that the business situs of the property was not within the jurisdiction of the City of Newark; that the said application of petitioner was denied and the appeal was disposed of as follows:

The assessment of \$500,000.00 be reduced to \$381,224.00.

Petitioner, therefore, prays that for the reasons herein set forth, the entire assessment made against the company's property and its capital stock paid in and accumulated surplus, be cancelled.

Dated December 11, 1935.

Universal Indemnity Insurance Company, by Harry Bird, Vice-President. (Seal.)

[fol. 57] *Duly sworn to by Harry Bird. Jurat omitted in printing.*

STATE OF NEW JERSEY,
County of Essex, ss:

Edward G. Slingerland, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on Frank A. Boettner (attorney) of City of Newark (name of taxing district), personally, this 12th day of December, 1935.

Edward G. Slingerland

Sworn and subscribed before me this 12th day of December, 1935. Samuel P. Watson, Notary Public of New Jersey. (Seal.)

[fol. 58] STATE OF NEW JERSEY,
County of Essex, ss:

Edward G. Slingerland, being duly sworn according to law, on his oath says that he served a copy of the above petition and affidavit on William P. Macksey (Secretary) of the Essex County Board of Taxation, personally, this 12th day of December, 1935.

Edward G. Slingerland.

Sworn and subscribed before me this 12th day of December, 1935. Samuel P. Watson, Notary Public of New Jersey. (Seal.)

[fol. 59] EXHIBIT P. 1

STATE BOARD OF TAX APPEALS

In the Matter of the Application of UNIVERSAL INDEMNITY INSURANCE COMPANY, a Corporation of the State of New Jersey, for Cancellation of the Tax Assessment for the Year 1935 on Its Property Alleged to be Situate in the Taxing District of the City of Newark, County of Essex and State of New Jersey, and on the Full Amount of Its Capital Stock Paid in and Accumulated Surplus

STIPULATION

It is hereby stipulated and agreed between the attorneys for the petitioner and the attorneys for the City of Newark, as follows:

The Universal Indemnity Insurance Company is a corporation organized under the laws of the State of New Jersey, and on October 1st, 1934, the registered office was at No. 810 Broad street, Newark, New Jersey.

The figures constituting and making up the assessment as determined by the Essex County Board of Taxation are:

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Taxable assets:

Capital stock.....	\$300,000.00
Accumulated surplus as of Sept. 30, 1934.....	202,675.92
Unearned premium reserved.....	223,204.17
Agency balances due.....	21,415.96
	<hr/>
	\$747,296.05

Exemptions allowed by law:

Bonds of U. S. Government—Value as of Sept. 30, 1934.....	\$45,750.00	
Bonds of municipalities of State of N. J.—Value as of Sept. 30, 1934.....	222,659.00	
Stocks of corporations not incorporated under laws of State of N. J.—Value as of Sept. 30, 1934.....	85,272.00	
Stocks of corporations of State of N. J.—Value as of Sept. 30, 1934.....	11,400.00	366,072.00
	<hr/>	
Balance.....		\$381,224.05

It is further stipulated and agreed that:

Cash on hand and on deposit as of Sept. 30, 1934, amounts to.....	\$117,697.07
Bonds secured on property located and taxed in the State of New Jersey—Value as of Sept. 30, 1934.....	13,366.00

Child, Riker, Marsh & Shipman, Attorneys for Appellant. Jno. A. Matthews, Attorneys for Respondent.

[fol. 61]

EXHIBIT P. 2

Universal Indemnity Insurance Company
Statement of Condition as of September 30, 1934

Income

Ledger Assets Dec. 31, 1933.....		\$1,138,361.53
Premiums less returns and reins.....	\$500,978.83	
Interest and Dividends.....	33,484.34	
Gain from sales of Investments.....	2,788.79	

Total Income.....		537,251.96
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		\$1,675,613.49
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Disbursements

Losses paid less reins, etc.....	\$205,352.88
Commission expenses and taxes.....	150,703.14

Total Disbursements.....		356,056.02
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		1,319,557.47
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Ledger Assets

Book value of Bonds and Stocks.....	\$996,863.67
Cash in Banks.....	117,697.07
Agents Balances.....	204,996.73

Total Ledger Assets.....		1,319,557.47
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Non-Ledger Assets

Accrued Interest.....		3,770.25
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Total Gross Assets.....		1,323,327.72
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Non-Admitted Assets

Agents balances over 90 days due.....	\$21,415.96
Book value of Bonds and Stocks over market value.....	204,961.67

Total Admitted Assets.....		226,377.63
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		1,096,950.09
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Liabilities

Reserve for outstanding losses.....	\$314,070.00
Reserve for unearned premiums.....	223,204.17
Reserve for commissions due.....	48,000.00
Reserve for other expense due.....	8,500.00
Subscriptions to Capital Stock.....	500.00

Capital.....	594,274.17	300,000.00
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Total Liabilities.....		894,274.17
Surplus.....		202,675.92

		\$1,096,950.09
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[fol. 62] BEFORE STATE BOARD OF TAX APPEALS

In the Matter of Appeal of UNIVERSAL INDEMNITY INSURANCE COMPANY from the Assessment of Property in City of Newark, County of Essex for the Year 1935

JUDGMENT

An appeal in writing having been filed with the State Board of Tax Appeals, duly verified according to the rules of practice prescribed by said Board, by Universal Indemnity Insurance Company in which it is alleged that an injustice has been done the said complainant by the assessment of certain property for taxation for the year 1935, located at City of Newark in the County of Essex consisting of Personalty located at 51 Clinton street and that said property is assessed higher than the true value thereof;

After hearing evidence produced on the part of said complainant, and the said respondent, and the argument of [fols. 63-67] Child, Riker, Marsh and Shipman, attorneys by Jehiel G. Shipman, attorney for the complainant, and John A. Matthews, attorney for the City of Newark and after considering the same, it is on this Twenty-eighth day of July, nineteen hundred and thirty-six, at a session of the State Board of Tax Appeals, Ordered, Adjudged and Decreed, under and by virtue of the authority conferred by law, that the assessment of \$381,224 on personalty, as reduced by the County Board of Taxation from \$500,000, levied for the year 1935 on the above described property, be affirmed and the appeal therefrom dismissed.

F. D. Weaver, President. M. R. Margerum, George Compton, David R. Smith, State Board of Tax Appeals.

Attest: Chas. E. Cook, Secretary.

[fol. 68] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

On Certiorari

STIPULATION RE CONSOLIDATION OF CASES

It is hereby stipulated and agreed that the above entitled case be consolidated with the case of Universal Indemnity Insurance Company against State Board of Tax Appeals of the State of New Jersey and City of Newark, now pending in the above entitled court on certiorari, for the hearing and argument in the aforesaid court and that one record may be printed of the proceedings in both cases and the depositions taken may be used at the hearing, as a part of the record in both cases.

Dated December 2d, 1936.

Child, Riker, Marsh & Shipman, Attorneys for Prosecutor.
Jno. A. Matthews, Attorney for City of Newark.

[fol. 69] BEFORE STATE BOARD OF TAX APPEALS

UNIVERSAL INDEMNITY INSURANCE COMPANY, Petitioner,

vs.

CITY OF NEWARK, Respondent

UNIVERSAL INSURANCE COMPANY, Petitioner

vs.

CITY OF NEWARK, Respondent

Statement of Evidence

Transcript of testimony taken in the above entitled matters before the State Board of Tax Appeals at the State House, Trenton, New Jersey on Tuesday, April 28th, 1936.

APPEARANCES

Child, Riker, Marsh & Shipman, Esqs., by Mr. Shipman, for the Petitioners.

Frank A. Boettner, Esq., by John A. Matthews, Esq., for the Respondent.

John F. Trainor, Court Reporter.

DISCUSSION RE STIPULATION

Mr. Shipman: If your Honor please, the points that we raise in this case are the same as were raised by Mr. Sandmeyer in the New Jersey Insurance Company case, the business situs theory and the unearned premium reserve and I have made—and also cash. There is certainly cash, which under the Statute, we claim should be deducted.

[fol. 70] President Weaver: There is no question but what you are trying these two cases both together?

Mr. Shipman: I think, we can. They are different types of companies. The Insurance Company does Marine and Fire and Indemnity does liability and the figures will be different, but I think, the testimony I will bring out will apply to both cases.

President Weaver: Any objection to trying the cases together?

Mr. Matthews: I have no objection to that.

President Weaver: There is no question at all, but what both of these companies are New Jersey companies?

Mr. Shipman: I have a stipulation here, two stipulations for each company, which shows that the registered office of both companies on October 1, 1934 was 810 Broad Street and that they are both New Jersey companies, and these stipulations show the figures upon which the county board based their assessment. I also have—

Mr. Matthews: Pardon me, Mr. Shipman. In signing this stipulation, we also want to say to the Board that these figures are from the books of the company and that they are correct.

Mr. Shipman: Oh, yes, sure, they are. I will offer those stipulations in evidence.

Mr. Matthews: We are consenting, in writing, to the stipulations in each one of the company's cases.

Stipulations above referred to marked Exhibit P. 1 in each case.

[fol. 71] Mr. Shipman: I have also here the copies of the condition of the two companies as of September 30th, 1934.

Mr. Matthews: Are they the same as you gave us?

Mr. Shipman: Yes.

Mr. Matthews: We have no objection to that being offered in evidence.

Mr. Shipman: I will put that in evidence for what it is worth, in each case.

Mr. Matthews: I will have to withdraw that consent. I thought we got a balance sheet.

Mr. Shipman: I thought you did, too.

Mr. Matthews: We didn't.

Mr. Shipman: You don't object to the figures as being correct? I will prove that by the auditor, that they came from the books, if you want it.

Mr. Matthews: No, your word is good enough for me for that.

Mr. Shipman: Then we can mark them both?

Statement of conditions of both companies marked Exhibit P. 2, in each case.

JOHN P. BYRNE, sworn for the Petitioner.

Direct examination.

By Mr. Shipman:

Q. Mr. Byrne, what is your office with the Universal?

A. Vice President and Secretary.

Q. And are you actively the manager of the business of those two companies?

Mr. Matthews: I am very sorry, but I didn't know you were going ahead with your testimony. We want to raise [fol. 72] the point in this case before the appellant puts in any of his case—

Mr. Shipman: Do you want to raise that now?

Mr. Matthews: If we raised it now, and the Court decides in our favor, we won't take your time and ours. Before the County Board, and when the insurance cases were called, as the record in the case up in Newark will show. Mr. Hoover arose and said: "I represent the Universal Indemnity Insurance Company and the Universal Insurance Company. These two insurance companies are incor-

porated in New Jersey, but have always done business in New York City. We have been recently doing a small amount of business in New Jersey. We are in a position to submit to the committee, or to counsel the figures in respect to our capital and surplus as a break-down of our securities, and I should think perhaps time would be saved if we submit them to Mr. Matthews." And then I said, "Mr. Matthews: we are perfectly glad to sit down with Mr. Hoover and perhaps arrive at a conclusion" and Commissioner Drill; that is the Chairman of the Essex County Tax Board said, "Didn't you receive a two weeks' notice on this case?" "Mr. Matthews: No, sir. I personally represent the City in these cases, and we received them on Saturday afternoon. Now, Mr. Hoover says that he is willing to submit the figures this afternoon and have them today or tomorrow morning at the latest. We are willing to sit down with him and agree on a settlement in the case [fol. 73] and then Commissioner Huegel said, "Can't you agree this afternoon?" Mr. Matthews: "We are perfectly willing. I shall be very glad to do it this afternoon." And then Mr. Solan, that was the Deputy Attorney General represented the Tax Board said: "Will the figures in this case be submitted? I assume, that you are going to submit them in writing" and Mr. Matthews: "We shall enter a stipulation at the end." And Mr. Solan said, "Will you submit it in brief form, so that this Board will know what the issue and what the argument on each side is in the respective matters" and then Commissioner Drill said, "in the form of briefs?" and Mr. Matthews said: "No, in the form of a short stipulation." After that Mr. Hoover and his accountant, Mr. Olsen, Mr. Crummy who is also an accountant as well as the lawyer and myself sat down and went over the figures of the two companies confessed judgment before the Essex County Board.

Mr. Shipman: Mr. Hoover confessed judgment?

Mr. Matthews: Mr. Hoover and Mr. Olsen and Mr. Barthel were there representing the companies and they confessed judgment and we humbly submit that the matter is res adjudicata.

President Weaver: The County Board acted, didn't they?

Mr. Matthews: The County Board accepted their agreement that they were taxable in this amount.

President Weaver: And they entered a judgment?

[fol. 74] Mr. Matthews: And they entered a judgment.

President Weaver: Of course, the matter is settled by section 10 of the County Board Act. The County Board having acted, the appellant here has a right to appear before this Board, because all actions of the County Board are appealable to this Board, so that we may enter a proper judgment. These cases are tried de novo?

Mr. Matthews: Yes.

President Weaver: And no matter what the County Board did, or what the judgment was before the County Board on the question of facts when you come here, you have got a new case, so your motion must necessarily be denied.

Mr. Matthews: Before I sit down, I except to your ruling. I was liking it to the fact, when we confessed judgment in the Courts below, we don't get much chance when we come in in this room before the Supreme Court or this Board.

Question repeated.

A. I am.

Q. How long have you been in the insurance business, Mr. Byrne?

A. 27 years.

Q. Where is the principal business office of the Universal Insurance Company and the Universal Indemnity Insurance Company? Where was that office on October 1, 1934?

A. 111 John Street, New York City.

Q. Previous to that date, where had the principal office of these two companies been?

[fol. 75] President Weaver: Do you mean that? You don't mean that, if this is a New Jersey Corporation.

Mr. Shipman: I mean the principal business office.

President Weaver: Let's keep our records straight.

Mr. Shipman: That is what I said, principal business office.

Question repeated.

Mr. Shipman: I mean principal business office.

A. At the same address.

Q. Is the business of these two companies conducted from that office?

A. It is.

Q. And was it on October 1, 1934?

A. It was.

Q. In what manner was it conducted by the companies themselves or through a manager or how?

A. Through a management corporation.

Q. What was the name of that corporation?

A. Talbot, Bird & Company, Incorporated.

Q. Is that a New Jersey or New York Corporation?

A. New York Corporation.

Q. And do these two companies conduct business throughout the whole United States?

A. They do.

Q. Authorized to do business in various States?

A. They are.

Q. And what kind of a business does the Universal Insurance Company do, principally?

A. Principally marine, but some fire and inland marine.

Q. And the Indemnity Company?

A. Automobile, liability and property damage.

[fol. 76] Q. Does the Indemnity Company also do business throughout other states other than New Jersey, throughout the United States?

A. It does.

Q. On October 1, 1934, did the Universal Insurance Company have any property within the City of Newark, the taxing district, any personal property?

A. I did not.

Q. Was there a bank account?

A. Yes, there was a small bank account.

Q. In what bank was that in?

A. National Newark and Essex.

Q. Was there an office in Newark of any sort?

A. There was a service office.

Q. And you had agencies throughout the State, too?

A. Yes.

Q. And other counties?

A. Yes.

Q. Just the same as you had in other States?

A. Correct.

Q. Where were the accounts for underwriting premiums due, collectable and payable?

A. In New York City.

Q. At the home office?

A. At the management office.

Q. Of both companies?

A. Of both companies.

Q. Did the agents here in New Jersey and in other States where you did business have any authority to hold the money to collect money due on premiums?

A. They did.

Q. For what purpose?

A. For remittance to New York.

Q. They had no control over the investment of management of that money?

A. They did not.

Q. Where was the auditing department of the company at that time?

A. In New York.

[fol. 77] Q. Where were all of the securities on October 1, 1934?

A. In New York.

President Weaver: I take it, like in Mr. Sandmeyer's case, there were no tangibles in New Jersey and the intangibles were all in New York State?

Mr. Shipman: That is correct.

Q. The agents from the various states would report underwritings to the company, to the management company?

A. That is correct.

Q. And did they go to New York?

A. Yes, sir.

Q. Did you have deposits with the Insurance Departments of the various states in which you did business for these two companies?

A. We did.

Q. In the form of what—securities?

A. Bonds and securities.

Q. Did you pay taxes in the States where you conducted business for the two companies?

A. We did.

Q. And what kind of a tax did you pay?

A. Premium tax.

Q. Was that generally the case throughout all of the States where you did business?

A. It was.

Q. A premium tax?

A. Yes.

Q. Did you pay a tax in New York? Do you pay a tax?

A. We do.

Q. What kind of a tax do you pay there?

A. A premium tax.

Q. You don't pay any personal property tax?

A. We do not.

Q. What proportion of the insurance premium of the Universal for the year 1934 came from policies that were [fol. 78] issued covering risks in the State of New Jersey, do you know?

A. I know it approximately. Approximately 7%.

Q. Have you a general idea of the total amount of premiums are collected on underwritings for the Universal Insurance Company?

A. Net premiums were somewhere around \$890,000, approximately.

Q. So that the New Jersey business would run to around \$70,000 at that rate?

A. That is correct.

Q. How about the Indemnity Company?

A. The amounts were somewhat larger. I would have to refresh myself as to the figures.

President Weaver: That might be quite important here as to the Indemnity Company.

Q. If I called your attention to figures for that year, say, around \$500,000 in total net premiums for the Indemnity Company, would that appear to be somewhere correct?

A. Somewhere near correct, yes, sir.

Q. And is that amount somewhere around \$400,000 written in New Jersey?

President Weaver: I had more special reference to the reserve for losses.

Mr. Shipman: There isn't any question of the reserve for losses.

President Weaver: Didn't they set up any reserve for losses?

Mr. Shipman: Yes, but that was allowed as a deduction in our case.

President Weaver: By whom, by the City?

[fol. 79] Mr. Shipman: Yes. The only question in our case is the reserve for unearned premiums and I am coming to that now.

President Weaver: There is another point here, how much actual securities are deposited with the Banking Commissioner of New Jersey, and what do they consist of?

Q. What securities are deposited here, Mr. Byrne?

A. About \$60,000 of government bonds for the Universal Insurance Company and \$200,000—

President Weaver: Are they all government bonds?

The Witness: All government bonds, in that case. And \$200,000 government and municipal bonds for the Indemnity Company.

Q. Was that condition as of October 1, 1934?

A. Yes.

President Weaver: How much of those municipal bonds were New Jersey bonds?

The Witness: Practically, I should say \$150,000 of the \$200,000 were New Jersey municipal bonds.

President Weaver: And the rest are foreign?

The Witness: No, government bonds. Of the \$200,000.

President Weaver: All of the municipal bonds are not New Jersey municipal bonds?

The Witness: Practically all, I should say so.

President Weaver: You should say so?

[fol. 80] The Witness: I can't tell exactly, but my recollection is that the majority of them were.

President Weaver: That burden is on you.

Mr. Shipman: I can bring that out, but it is my thought an insurance company is taxable on its capital stock and surplus; and therefore, the capital stock and surplus is made up of property, of course.

President Weaver: I know, but you are proceeding under a different theory. You have taken all of the securities out of the State to escape taxation, and escaping taxation.

Mr. Shipman: We haven't taken them out.

President Weaver: I am not criticising you for that. They are out of the State, according to your theory, they are out of the taxing powers of New Jersey. Whether that is proper or not, we have to determine. It seems to me, if that theory is correct, then, perhaps the only property subject to taxation would be the property, or at least the securities that are pledged with the Banking Commissioner. No doubt government bonds are free from taxation and New Jersey municipal bonds are free from taxation. Whether foreign municipal bonds are free from taxation, I don't know. I think, you ought to bring that out.

Mr. Shipman: My thought was, of course, this is a different case from a tax on personal property. An insurance company is taxed on its capital stock and surplus and we [fol. 81] have got to take certain items to make that up.

President Weaver: I know, but don't you see—

Mr. Shipman: It doesn't make any difference what is in New Jersey and what isn't, if the business situs is in New York City, then they can't be taxed at all, because you can't find anything to make up that capital stock and surplus.

President Weaver: The answer to that is, if it is a New Jersey corporation, it should be taxed as provided by the Statute, and those securities, while they are out of the State, although they are not physically here, they are here, because they are the property of the Insurance Company. This is not the case, it don't seem to me—I don't know—where a miscellaneous corporation, which was taxed in the ordinary way has certain tangibles here in the State, and certainly intangibles which may be deposited in other States. They may not be subject to taxation in New Jersey at all, because they have acquired a different situs, but here is an insurance company that gets its life and its being and its right to do business from the State and being taxed the way it is, it is a question to my mind whether the securities taken out of it—I am not settling it at all.

Mr. Shipman: I think it is a little bit different from the ordinary case, in which your Honor has held intangibles, like bonds out of the State, are assessable here. The theory of the case is that a business situs is elsewhere.

[fol. 32] President Weaver: I have held where estates were involved—

Mr. Shipman: Yes.

President Weaver: There, of course, it is a little different proposition, because the Statute provides these securities shall not be taken out of the State without leave of the court.

Mr. Shipman: But I just want to make that distinction. This is a business situs; that this business is all done in New York; and therefore, the situs of the company and of its property for tax purposes is not within the taxing district.

President Weaver: It would seem a little inconsistent.

Mr. Shipman: I have decisions on which I think—I hope to be able to—I don't want to argue the matter now and take up time.

Q. Now then, I want to ask Mr. Byrne on the statement on this stipulation here marked P. 1, there is an item of unearned premium reserve of the insurance company amounting to \$336,725.77. Will you explain just what that unearned premium reserve represents and how it is set up?

A. It is a reserve to compel—the company is compelled to set up by the Insurance Department of the various States. It is there for several purposes, all for the protection of the policy holder. If the policy holder at any time cancels his policy, the returned premium is paid out of this unearned premium reserve. During the course of business an insurance company finds very often that their loss is a great deal more on particular classes of business, and if [fol. 83] they cancel the insurance, because of that loss, they must return the premium to the assured.

President Weaver: They prorate it?

The Witness: They prorate it. Whatever belongs to the assured, must be returned to the assured out of that reserve which is set up. If the company gets into difficulty, the Insurance Department, of course, compels it to liquidate through that reserve and if at any time it stops writing a class of business, but desires to keep the premium, all of the losses that accrue after that date are paid out of the unearned premium reserve.

Q. The amount of that unearned premium reserve is checked by the Insurance Department here in New Jersey, isn't it?

A. Yes, sir.

Q. And do you know whether that particular item has been examined by the Insurance Department here?

A. It was.

Q. And O. K.'d?

A. It was O. K.'d.

Q. You are required by the department to set that up as a liability?

A. They compel us to, and if we haven't got enough up, they compel us to put up some more.

Q. In case you want to sell your underwritings in the case of bad business, that unearned premium reserve would be used for that purpose, would it not?

A. Correct.

Mr. Matthews: Do I understand you say you are compelled by the department to set it up as a liability, is that correct?

The Witness: That is correct.

President Weaver: Is there anything that can be produced here to indicate the nature of these securities which are outside of New Jersey? Suppose, I get to that point, it may be these are classes of securities that the assessment would be entirely wiped out by reason of their nature. Of course, you don't think that point ought to be reached, and it may be reached and in that event it may be very helpful to know what these securities are.

Mr. Shipman: In the stipulation here, your Honor, all of the stocks—

President Weaver: You must forgive me. I don't know what the stipulation contains.

Mr. Shipman: Of course, you don't. All of the stocks, government bonds, municipal bonds, stocks of corporations, both of New Jersey and out are all allowed as an exemption by the City wherever they are; so therefore, they are out anywhere, as I see it, stocks are exempt.

President Weaver: They may or may not be. If the City has gone to that point, that is no affair of mine.

Mr. Matthews: We have stipulated that, and that is why I haven't gone into that.

President Weaver: That clears that up. I didn't know the City was so liberal.

Mr. Matthews: It is your decision. We can't stipulate the law away, but we are perfectly willing to agree with them on anything they want.

President Weaver: That is not stipulating the law away. You may stipulate all of the facts you please, but when it comes to stipulating the law, that is for the Board.

[fol. 85] Mr. Shipman: I guess that is all, I want from Mr. Byrne. Cross examine.

Cross-examination.

By Mr. Matthews:

Q. When I asked you did you say that that premium reserve, you were compelled by the Banking and Insurance Department to set it up as a liability and you gave what use is made of it in certain emergencies, do you think the reason

the department has you set that up as a liability is just for that reason, or don't they want you to use it for the payment of dividends?

A. The reason they do it is for the protection of the policy holders.

Q. Have you any property, any tangibles in New York?

A. The Company?

Q. Yes. You have a big office over there?

A. Quite a large office, yes.

Q. What is its value in each company or are they both together?

A. We have four companies there.

Q. You don't pay any tax over there, do you, any personal tax?

A. The companies don't, no.

Q. You don't pay any in New Jersey either, if Mr. Shipman's contention is true, is that right?

A. That is correct.

President Weaver: Of course, that is unimportant.

Mr. Matthews: It is nice to tell it to Shipman. All right, that is all.

Mr. Shipman: I would like to call Mr. Olsen, but I don't know whether he can give me those figures on those policies.

President Weaver: Why not send them in. We will take your word for it. I don't think there is another thing.

[fol. 86] Mr. Shipman: I will argue the question of cash in my brief, shall I?

President Weaver: Oh, yes, let's have briefs in ten or fifteen days.

The hearing then adjourned.

CERTIFICATE OF STENOGRAPHER

I, John F. Trainor, the stenographer designated by the State Board of Tax Appeals to report stenographically the evidence given before said Board upon the hearing of the appeals of Universal Insurance Company and Universal Indemnity Insurance Company, from the assessments of taxes made by the City of Newark, for the year 1935, do hereby certify that the foregoing is a true and correct transcript of the evidence given before said Board at the hearing on Tuesday, April twenty-eighth, 1936.

In witness whereof I have hereunto set my hand and seal
this eighteenth day of December, 1936.

John F. Trainor, (Seal.)

[fol. 87]

CERTIFICATE OF SECRETARY

I, Chas. E. Cook, Secretary of the State Board of Tax Appeals, do hereby certify and send to the Justices of the Supreme Court the foregoing transcript, as a true and correct transcript of the evidence given before said Board upon the hearing of the appeals of Universal Insurance Company and Universal Indemnity Insurance Company, from the assessments of taxes made by the Ci. of Newark, for the year, 1935, said evidence having been submitted at the hearing on Tuesday, April twenty-eighth, 1936.

In witness whereof I have hereunto set my hand and affixed the official seal of the Board, at Trenton, this eighteenth day of December, 1936.

Chas. E. Cook. (Seal.)

[fols. 88-110] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

On Certiorari

Statement of Evidence

Transcript of testimony taken in the above entitled causes before Nicholas W. Bindseil, Esq., as Supreme Court Commissioner, by consent without notice, at the office of John A. Matthews, Esq., National Newark and Essex Building, on Wednesday, December 23rd, 1936, at 3 P. M.

APPEARANCES

Messrs. Child, Riker, Marsh & Shipman, by J. G. Shipman, Esq., representing the prosecutors.

Honorable John A. Matthews, and Andrew Crummy, Esq., representing the respondents.

[fol. 111] JOHN T. BYRNE, a witness called in behalf of the prosecutors, being first duly sworn according to law, on his oath testified as follows:

Direct examination.

By Mr. Shipman:

Q. You are the vice-president and a director of the Universal Insurance Company?

A. I am.

Q. And of the Universal Indemnity Insurance Company?

A. Yes, sir.

Q. Did the assessments that were levied by the City of Newark against the capital stock and accumulated surplus of those two companies come to your personal attention?

A. Yes.

Q. In the year 1935?

A. Yes.

Q. And what action did you take with respect to those assessments?

A. I asked Mr. Barthel, our cashier, to get in touch with Congleton, Stallman & Hoove, to ascertain what it was all about. He—

Mr. Matthews: I object to the conversation.

Q. What authority did you give your attorneys with respect to action on those assessments?

A. No authority whatsoever, except to observe what was going on in connection with the assessments.

Q. Did you give any authority to make any agreements with the City of Newark to fix the amount of the assessments for the two companies?

A. Absolutely none.

Q. For the year 1935?

A. No.

Q. Did the Board of Directors of your company give any authority to your attorneys to make any such agreement as [fols. 112-136] that?

A. No, they did not.

Q. Was any agreement fixing the assessment of any amount for the year 1935 of those two companies ever submitted to you or to your Board of Directors for confirmation?

A. There was not.

Q. Did you or did the Board of Directors of the company ever consent to having judgment entered by the Essex County Board of Taxation against the Universal Indemnity Insurance Company in the amount of \$381,224, and against the Universal Insurance Company in the amount of \$455,400?

A. No.

Q. Did you authorize Mr. Barthel, your cashier, or Mr. Olsen, your auditor, to enter into any agreement with the City fixing the amount of the assessments for taxes for the two companies for the year 1935, or to consent to the entry of judgment by the Essex County Board of Taxation against the two companies in the amounts I have named in the previous question?

A. No, I did not.

Q. Now, Mr. Byrne, with reference to the exhibit which has been marked in evidence P. 1, the form of annual statement which is required to be filled out by insurance companies for the State Department of Banking and Insurance, referring particularly to the unearned premium reserve, is there any particular asset which is set off to represent the item of unearned premium reserve as set up in that statement?

A. There is not.

Q. And do you segregate any assets to—

Mr. Matthews: We do not contend there is any particular asset.

[fol. 137] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

On Certiorari

REASONS FOR REVERSAL—Filed December 26, 1936

The prosecutors by Child, Riker, Marsh & Shipman, their attorneys, come and pray that the judgments rendered against them by the State Board of Tax Appeals confirming the personalty assessments levied against them for the year 1935 by the Essex County Board of Taxation may be reversed, set aside and for nothing holden for the following reasons:

1. The said State Board of Tax Appeals erred in holding that the prosecutors were taxable in the State of New Jersey for the personal property allegedly owned by them, since all [fol. 138] of said personal property was physically located outside of this State and all of said personal property had established a business situs outside of this State, to wit, in the State of New York.

2. That said Board erred in holding that reserves for unearned premiums cannot be deducted from assets in determining the amount of accumulated surplus upon which prosecutors are liable to taxation.

3. That said Board erred in holding that reserves for agency balances cannot be deducted from assets in determining the amount of accumulated surplus upon which prosecutors are liable to taxation.

4. That said Board erred in holding that reserves for outstanding losses cannot be deducted from assets in de-

termining the amount of accumulated surplus upon which prosecutors are liable to taxation.

5. That said Board erred in holding that the difference of book value of stocks and bonds over market value cannot be deducted from assets in determining the amount of accumulated surplus upon which prosecutors are liable to taxation.

6. That said Board erred in holding that the judgments for assessments rendered against prosecutors by the Essex County Board of Taxation were entered by consent of the parties and that, therefore, it, the said Board, did not have jurisdiction to change said judgments.

7. That said Board erred in refusing to permit prosecutors to present evidence in support of their contention that the judgments rendered against them by the Essex [fol. 139] County Board of Taxation were not entered by or with their consent.

8. That said Board erred in refusing to permit prosecutors to present evidence in support of their contention that reserves for outstanding losses and the difference of book value of stocks and bonds over market value are properly deductible from assets in determining the amount of accumulated surplus upon which prosecutors are liable to taxation.

9. That the judgments entered against prosecutors by said Board subject prosecutors to double taxation and confiscate and deprive prosecutors of their property without due process of law, contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.

10. That the proceedings had before said Board and the judgments rendered against prosecutors by said Board are in divers other respects irregular, illegal, oppressive and unjust to prosecutors.

Child, Riker, Marsh & Shipman, Attorneys for Prosecutors.

[fol. 140] IN SUPREME COURT OF NEW JERSEY, MAY TERM,
1937

No. 216/217

UNIVERSAL INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

RULE AFFIRMING JUDGMENT—Filed September 25, 1937

The court having inspected the transcript and proceedings of the State Board of Tax Appeals returned with the certiorari in this cause, and the reasons for reversing the judgment below, and heard the argument of counsel therein, and having duly considered the same:

It is, on this 25th day of September, 1937, Ordered, that the judgment of the State Board of Tax Appeals be in all things affirmed, with costs.

Entered September 25th, 1937.

On motion of John A. Matthews, Special Counsel to the City of Newark.

[fol. 141] IN SUPREME COURT OF NEW JERSEY, MAY TERM,
1937

UNIVERSAL INSURANCE COMPANY, Prosecutor,

v.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor,

v.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

Argued May 6, 1937. Decided August 31, 1937

On Certiorari

Before Justices Bodine, Heher and Perskie

For the prosecutors, Child, Riker, Marsh & Shipman.

For the respondents, John A. Matthews (Andrew B. Crummy, on the brief).

OPINION—Filed September 1, 1937

The opinion of the court was delivered by

PERSKIE, J.:

This is a taxation case. The facts in the case at bar are practically identical; save as to the names of the parties, their respective addresses here and in New York, and the figures, with those set forth in the case of Newark Fire Insurance Co. v. State Board of Tax Appeals (Supreme Court), 118 N. J. L. 525. The issues presented and decided [fol. 142] in that case were (1) jurisdiction to tax; (2) taxation upon the item of unearned premium reserve; and (3) taxation upon cash. The issues presented for decision in the case at bar are (1) jurisdiction to tax; (2) taxation upon unearned premium reserve; (3) taxation upon reserve for outstanding losses; and (4) taxation upon the item of book value of stocks and bonds over market value.

Deciding as we do that there is no difference in principle, for the purpose of taxation, between the item of reserve for

losses and the item of unearned premium reserve, which we held to be taxable, our decision in the case of *Newark Fire Insurance Co. v. State Board of Tax Appeals*, *supra*, is dispositive of all issues in the case at bar save the fourth, wherein prosecutors contend that it was error to include the item of book value of its stocks and bonds over the market value thereof as a taxable asset.

In support of its contention it is argued that the regulations of insurance companies require book value of securities to be set up. These same regulations, it is pointed out, require the amortized value of the bonds, and the market value of the stock to be set up under the heading of "Non-admitted assets." The board included these last two items as an asset, whereas prosecutors contend that the true value is to be determined by deducting the market value of stocks, and the amortized value of bonds from the book value and that this is done by first setting up the book value and then deducting the difference between the book value and the market or amortized value so that the net value is reflected in admitted assets with market value.

We perceive in this contention nothing more than another of the many varied attacks already made by the taxpayer [fol. 143] upon the tax exacting authority in the time immemorial and continuing struggle between these two opposing forces. It presents nothing new. There is ample strength, ample precedent in the law to withstand and completely repel this assault. The basic weakness of this attack is that prosecutors proceed on the theory that exchange value or market value is the invariable test of true value under all circumstances. This is not so. In the words of our Court of Errors and Appeals in *Newark v. Tunis*, 82 N. J. L. 461; 81 Atl. Rep. 722 (opinion by Parker, J.), " * * * true value is not always to be ascertained by reference to selling price; * * * special circumstances may increase or depress market value without affecting true values or vice versa." And, on the other hand, as pointed out in that opinion by reference to the opinion of the Supreme Court (81 N. J. L. 45; 81 Atl. Rep. 490—opinion by Swayze, J.) there are many factors, not by way of limitation but rather by way of example, such as "good will, dividend earning power, ability in management, public confidence," &c., which are not reflected in book value. Under the tax law it is the duty of the assessor to make an independent investigation of these and all other factors in de-

termining the true value. The case of *Newark v. Tunis*, supra, stands, therefore, for the principle that, under ordinary and normal conditions, exchange or market value is a workable but not an invariable test of true value. "It (market value) is nothing more than a convenient index and evidence of true value under ordinary and normal conditions." *Id.* (at p: 463).

Thus the same court recently (1935) gave forceful illustration to the variability of the working rule. In determining true value, at a time of a depression when market prices were of no service, it held that, while county boards were not bound by bank figures (*Newton Trust Co. v. Atwood*, 77 N. J. L. 141; 71 Atl. Rep. 110; they must base their determination upon all the evidence) they were not obliged to rewrite them, and that since the bank made its own statement as to the value of its assets it could not, under the circumstances of that case, be heard to complain when those figures were accepted by local and state boards. *Second National Bank v. State Board of Tax Appeals*, 114 N. J. L. 573; 178 Atl. Rep. 96, and cases therein cited. The stated principles applicable to bank stock are also applicable to other stocks and bonds.

Prosecutors seek to distinguish the instant case from the *Second National Bank* case by pointing out, as already noted, that in the case at bar they were, pursuant to state requirements or regulations, obliged to set up market value of stock under the heading of "non-admitted assets," whereas in the *Second National Bank* case the book value was voluntarily set up. This is without merit. If prosecutors concluded the regulation complained of abortive, they should have sought recourse to the law; their statement had, moreover, no binding effect. *Newton Trust Co. v. Atwood*, supra. It was merely one of the factors which the county board was duty bound to consider with all other factors in the cause. From all that has been written, it is quite obvious that there is no hard and fixed rule and force that is to be given by those charged with the duty of determining true value to each and every factor pertinent and ascertainable in a given case. That necessarily must depend upon the facts and circumstances of each particular case. Having ascertained the applicable factors determinative of true value, we next consider how these factors are to be admeasured in money. Our answer is as follows: what would the property sell for, as of the day it

was assessed, at a fair and bona fide sale by private contract; or what in the opinion of the assessor, based on his investigation and all the proofs, could be obtained for the property in money at a fair sale, as of the day it was assessed, between a willing seller and a willing buyer, that is one not obliged to sell dealing with one not obliged to buy? *New Jersey Bell Telephone Co. v. City of Newark*, 118 N. J. L. 490.

"Taxation is an intensely practical matter * * *"
Farmers Loan and Trust Co. v. Minnesota, 280 U. S. 204; 74 L. Ed. 371, 375. It is an intense reality. We are of the opinion that the rule stated in the *Bell Telephone* case is comprehensive, it is intensely practical and real, it embodies all of the factors necessarily determinative of true value.

We are not at all convinced that the taxing authorities did not, in the case at bar, give due and proper regard to all the facts and circumstances necessarily applicable in determining the true value of prosecutor's taxable property.

We desire to mark the fact that we have not overlooked the point made by respondents that the state board of tax appeals was without jurisdiction because the judgment of the Essex County Board of Taxation was entered by consent of the parties. *Kenilworth v. State Board of Equalization of Taxes*, 78 N. J. L. 302; 72 Atl. Rep. 966. We pause long enough to make the observation that the holding of the state board of tax appeals sustaining the point [fol. 146] was reached only after it had given full consideration to all of prosecutor's points and had found them to be without merit. Because of either state and public concern, or section 11 of the Certiorari act (1 Comp. Stat. 1709-1910, pp. 402, 406) or both, we have reached our result on the merits.

Judgment is affirmed, with costs.

[fol. 147] IN SUPREME COURT OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Prosecutor,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Prosecutor,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and CITY OF NEWARK, Respondents

On Certiorari

NOTICE OF APPEAL AND GROUNDS OF APPEAL—Filed December
18, 1937

To Respondents, State Board of Tax Appeals of the State
of New Jersey and City of Newark:

Take Notice that the prosecutor appeals to the Court of
Errors and Appeals in the last resort in all causes from
the whole of the judgment of the Supreme Court entered
in this cause on the following ground:

[fols. 148-176] 1. The Supreme Court erred in affirming
the judgment of the State Board of Tax Appeals and in
dismissing the writ of certiorari herein.

Child, Riker, Marsh & Shipman, Attorneys for Pros-
ecutors.

Dated November 18th, 1937.

Sat below: Bodine, J.; Heher, J.; Perskie, J.

Service of a copy of the within notice of appeal and
grounds of appeal is hereby acknowledged this 22nd day
of November, 1937.

Jno. A. Matthews, Attorney for City of Newark.

Service of a copy of the within notice of appeal and
grounds of appeal is hereby acknowledged this 19th day of
November, 1937.

Chas. E. Cook, Secretary, State Board of Tax Ap-
peals.

[fol. 177] IN SUPREME COURT OF THE UNITED STATES

UNIVERSAL INSURANCE COMPANY, Appellant,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Appellant,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

PETITION FOR APPEAL FROM THE COURT OF ERRORS AND AP-
PEALS OF THE STATE OF NEW JERSEY TO THE SUPREME
COURT OF THE UNITED STATES—Filed October 13, 1938

To the Honorable Louis D. Brandeis, Associate Justice of
the Supreme Court of the United States:

Your petitioners, Universal Insurance Company and
Universal Indemnity Insurance Company, respectfully
show:

1. Petitioners are the appellants in the above entitled
cause and their cases were consolidated for hearing and
argument in the Court of Errors and Appeals of the State
of New Jersey and petitioners have likewise consolidated
their cases for the purpose of hearing and argument before
this Court, the questions of law involved in both cases being
identical.

2. On August 16th, 1938, there was duly presented to the
Honorable Luther A. Campbell, Chancellor of the State of
New Jersey and Presiding Judge of the Court of Errors
and Appeals of the State of New Jersey, a petition for
appeal in the above entitled cause, together with assign-
ments of error, prayer for reversal, statement of jurisdic-
tion, order for appeal and bond.

3. On August 16th, 1938, Honorable Luther A. Campbell,
Chancellor and Presiding Judge as aforesaid, denied your
petitioners' said petition for allowance of appeal, solely
on the ground of lack of jurisdiction. His said denial of
[fol. 178] said appeal is endorsed upon the face of said
petition for appeal which is presented herewith.

4. Petitioners state that they were, on October 1, 1934, and now are incorporated under the laws of the State of New Jersey. On said date both companies had registered offices in the City of Newark, Essex County, New Jersey. The home offices of both companies were on said date, and at the present time are located at 111 John Street, in the City and State of New York. All of the intangible assets, including securities, bank accounts, cash, books and records were at that time and now are kept at the home offices in the City and State of New York.

5. The City of Newark assessed a personal property tax against the capital stock and accumulated surplus of the petitioners as of October 1, 1934, pursuant to Chapter 236 of the Laws of New Jersey of 1918, Sections 202, 301 and 307, now changed to Revised Statutes of New Jersey for 1937, Sections 54: 4-1, 54: 4-9 and 54: 4-22. Petitioners appealed from these assessments to the Essex County Board of Taxation, where judgments were rendered, reducing said assessments but not cancelling the same. Petitioners thereupon appealed to the State Board of Tax Appeals of the State of New Jersey, and a full hearing was held, and petitioners contended that the City of Newark had no legal right or jurisdiction to assess petitioners' personal property which was outside of the jurisdiction, petitioners having their business situs and main offices in the City of New York, and that if the sections of the said statute directed the levying of the taxes on property located outside of the taxing district and the assessments were allowed to stand, the effect would be to render Sections 202, 301 and 307 of Chapter 236 of the Laws of 1918 (now Revised Statutes 1937, Sections 54: 4-1, 54: 4-9 and 54: 4-22), contrary to the 14th Amendment of the United States Constitution, in that it would deprive petitioners of property without due process of law. The State Board of Tax Appeals overruled petitioners' contention and entered judgment [fol. 179] affirming the judgments of the Essex County Board of Taxation and dismissing the petitioners' appeals.

6. Petitioners thereupon appealed to the New Jersey Supreme Court, where the cases of both petitioners were consolidated. The same constitutional question was raised before the New Jersey Supreme Court, to wit, that the busi-

ness situs of petitioners and of the personal property taxed was in the State of New York and, therefore, the City had no jurisdiction to assess petitioners' intangible personal property, and the New Jersey Supreme Court affirmed the judgments of the State Board of Tax Appeals on the ground that the assessments were valid and the application of the statute in holding the assessments valid was not repugnant to the 14th Amendment to the United States Constitution. Thereupon petitioners appealed from the judgment of the New Jersey Supreme Court to the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, which affirmed the judgment of the New Jersey Supreme Court upon the opinion of the Supreme Court and for the reasons expressed therein.

7. In said cause there is drawn in question the validity of the statutes of the State of New Jersey, to wit, Chapter 236 of the Laws of 1918, Sections 202, 301 and 307 (now Revised Statutes 1937, Sections 54:4-1, 54:4-9 and 54:4-22) on the ground of said statutes, having authorized the taxation of property situate outside of the taxing district, are repugnant to the 14th Amendment of the Constitution of the United States and the final decision and judgment in this cause is in favor of the validity of said statute. The Court of Errors and Appeals, by its decision and judgment, did uphold the right of the City of Newark to levy a tax assessment against the personal property of petitioners under the statute and sections above mentioned, and the construction of said statute as thus applied, is repugnant to the 14th Amendment of the United States Constitution, by depriving petitioners of their property without due process of law, [fol. 186] since the application of the statute allowing such assessments permits the taxation of petitioners' intangible personal property beyond the jurisdiction of the taxing district and at its business situs where it is permanently located and controlled.

Wherefore, petitioners pray for the allowance of an appeal from the judgment and decision of said Court of Errors and Appeals of the State of New Jersey to the Supreme Court of the United States, in order that the decision and judgment of the Court of Errors and Appeals of the State of New Jersey may be examined and reversed, and

prays that a transcript of the record, proceeding and papers in the case, duly authenticated by the Clerk of the Court of Errors and Appeals of the State of New Jersey, be sent to the Supreme Court of the United States, as provided by law, and the errors upon which the petitioners claim to be entitled to appeal are those above stated and more fully set forth in an assignment of errors filed herewith.

Jehiel G. Shipman, John G. Jackson, Attorneys for
and of Counsel with Petitioners-Appellants.

Application for allowance of the appeal made to me this
22d day of August, 1938.

Louis D. Brandeis, Associate Justice.

A True Copy. Thomas A. Mathis, Clerk.

[fol. 181] [File endorsement omitted.]

[fol. 182] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed October 13, 1938

The said Universal Insurance Company and Universal Indemnity Insurance Company assign the following errors in the record and proceeding in said cases:

1. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court and in holding that the assessment levied by the City of Newark, under Sections 202, 301 and 307 of Chapter 236 of the Laws of 1918 (Revised Statutes of 1937, Sections 54:4-1, 54:4-9 and 54:4-22) against the intangible personal property of petitioners for taxes for the year 1935 was a valid assessment, because the business situs of petitioners and of the property taxed, on October 1, 1934, was located in the City and State of New York, beyond the jurisdiction of the taxing district, and the application of the said Sections of the Statute in holding said assessments valid rendered the said Sections of the said Statute repugnant to the 14th Amendment of the Constitution of the United States by depriving petitioners of their property without due process of law.

2. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court and in upholding as valid the assessments levied by the City of Newark against petitioners' intangible personal property under Sections 202, 301 and 307 of Chapter 236 of the Laws of 1918 (Revised Statutes of 1937, Sections 54:4-1, 54:4-9 and 54:4-22) and by so doing said Court did administer the said Sections of the Statute and apply the same so that said Sections of the said Statute were repugnant to the 14th Amendment of the Constitution of the United States and did deprive petitioners of their property without due process of law.

3. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court and in holding that the assessments levied by the City of Newark against the intangible personal property of petitioners for taxation for the year 1935 under Sections 202, 301 and 307 of Chapter 236 of the Laws of 1918 (Revised Statutes of 1937, Sections 54:4-1, 54:4-9 and 54:4-22), were valid, because upon the taxing date, October 1, 1934, said intangible personal property was outside of the jurisdiction of the City of Newark, and the business situs of petitioners and of the taxed intangible personal property was located in the City and State of New York on said date, and the said Court in so holding, did render the said Sections of the said Statutes repugnant to the 14th Amendment of the Constitution and denied the petitioners the equal protection of the laws.

4. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court and in holding valid the assessments levied by the City of Newark against the intangible personal property of the petitioners under Sections 202, 301 and 307 of Chapter 236 of the Laws of 1918 (Revised Statutes of 1937, Sections 54:4-1, 54:4-9 and 54:4-22) because the Court of Errors and Appeals should have reversed the judgment of the Supreme [fol. 184] Court and held that said assessments were invalid under said Statutes, for the reason that the intangible personal property of the petitioners on the taxing date under said Statutes on October 1, 1934, was outside of the juris-

diction of the taxing district of the City of Newark, and because the business situs of the said intangible personal property was located in the City and State of New York on said date, and therefore not subject to taxation by the City of Newark.

Therefore, the appellants come and pray that the judgment rendered against them by the Court of Errors and Appeals of the State of New Jersey, affirming the judgment of the New Jersey Supreme Court, may be reversed, set aside and for nothing holden.

Jehiel G. Shipman, John G. Jackson, Attorneys for
and of Counsel with Petitioners-Appellants.

A True Copy. Thomas A. Mathis, Clerk.

[fol. 185] [File endorsement omitted.]

[fol. 186] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed October 13, 1938

The petition of Universal Insurance Company and Universal Indemnity Insurance Company, for an appeal in the above cause to the Supreme Court of the United States, from the judgment of the Court of Errors and Appeals of the State of New Jersey, and the Assignment of Errors filed therewith, and the record of said cause having been considered;

It is Ordered that the appeal be and it is allowed to the Supreme Court of the United States from the judgment of the Court of Errors and Appeals of the State of New Jersey, as prayed in said petition, and that the Clerk of the Court of Errors and Appeals of the State of New Jersey shall prepare and certify a transcript of the record and proceedings in the above cause and transmit the same to the Supreme Court of the United States within 40 days from the date hereof.

It is further Ordered that said Universal Insurance Company and Universal Indemnity Insurance Company shall give good and sufficient security in the sum of \$500 and

[fol. 187] that said appellants shall prosecute said appeal with effect and if said appellants fail to make their plea good, they shall answer all damages and costs.

Dated October 3, 1938.

Louis D. Brandeis, Associate Justice.

A true copy. Thomas A. Mathis, Clerk.

[fol. 188] [File endorsement omitted.]

[fol. 189] Citation, in usual form, showing service on Chas. E. Cook et al., filed October 13, 1938, omitted in printing.

[fols. 190-194] Bond on appeal for \$500.00, approved and filed October 13, 1938, omitted in printing.

[fol. 195] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed October 13, 1938

The following are the portions of the record which are to be incorporated in the transcript to be made by the Clerk and filed with the Clerk of the United States Supreme Court:

1. The petition for appeal.
2. Assignment of Errors.
3. Order allowing appeal.
4. Citation and bond.
5. One copy of the printed state- of the Case in the above entitled cases in the New Jersey Court of Errors and Appeals.
6. Statement of basis of jurisdiction under Rule 12.
7. Proof of acknowledgment of service upon the appellees of copy of the petition, order allowing appeal, assignments of error and statement required by paragraph 1 of Rule 12, and a statement directing attention to paragraph 3 of Rule 12 and proof of service of these papers.

8. Per curiam opinion of the Court of Errors and Appeals [fol. 196] and judgments entered thereon in the above cases.

9. The foregoing Praecipe.

Jehiel G. Shipman, John G. Jackson, Attorneys for
and of Counsel with Petitioners-Appellants.

[fols. 197-199] [File endorsement omitted.]

[fol. 199a] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Appellant,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Appellant,

vs.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

Argued February 4, 1938. Decided April 29, 1938

On Appeal from the Supreme Court, Whose Opinion is
Reported in 118 N. J. L. 538

For the Appellants, Child, Riker, Marsh & Shipman.

For the Respondents, John A. Matthews.

OPINION—Filed April 29, 1938

Per CURIAM:

The judgment under review herein should be affirmed, for the reasons expressed in the opinion delivered by Mr. Justice Perskie in the Supreme Court.

For affirmance—The Chancellor, Chief Justice, Parker, Case, Donges, Hetfield, Dear, Wells, WolfsKeil, Rafferty, Walker, JJ. 11.

For reversal—None.

For reversal as to second and fourth points—Case, Hetfield, Walker, JJ. 3.

[fol. 200] IN COURT OF ERRORS AND APPEALS OF NEW JERSEY

UNIVERSAL INSURANCE COMPANY, Appellant,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

UNIVERSAL INDEMNITY INSURANCE COMPANY, Appellant,

VS.

STATE BOARD OF TAX APPEALS OF THE STATE OF NEW JERSEY
and THE CITY OF NEWARK, Respondents

On Appeal

ORDER OF AFFIRMANCE AND REMITTITUR TO SUPREME COURT

The above entitled causes having been duly argued at the February term, 1938, of this court by Jehiel G. Shipman, of counsel for the appellants, and Andrew B. Crummy, of counsel for the respondent, City of Newark, and the court having considered the same, and finding no error in the record of proceedings in the Supreme Court,

It is, thereupon, on this 29th day of April, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight, Ordered and Adjudged that the judgment of the Supreme Court reviewed by the appeal in this cause, be affirmed with costs; and that the record be remitted to the Supreme Court to be proceeded with in accordance with this judgment and the practice of said court.

On motion of Jno. A. Matthews, Special Counsel to City of Newark.

A True Copy. Thomas A. Mathis, Clerk.

Endorsed: "Filed May 31, 1938, Thomas A. Mathis, Clerk."

[fol. 201] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 202] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO
 RELY AND DESIGNATION OF PARTS OF RECORD, NECESSARY FOR
 THE CONSIDERATION THEREOF, TO BE PRINTED—Filed No-
 vember 2, 1938

The appellants intend to rely upon the following points
 upon the argument of the above entitled cases:

1. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court, and in holding valid the assessments for personal property taxes for the year 1935, levied by the City of Newark, under Sections 202, 301, 305 and 307 of Chapter 236 of the Session Laws of 1918 of the State of New Jersey (Revised Statutes of New Jersey of 1937, Sections 54:4-1, 54:4-9 and 18 and 54:4-22) against the intangible personal property of appellants, constituting appellants' capital stock paid in and accumulated surplus, because the business situs of appellants and of the intangible personal property assessed and taxed, was on the assessing and taxing date, October 1, 1934 and at all times has been located in the City and State of New York, beyond the jurisdiction of the taxing district of the City of Newark, and the application of the said Sections of the Statute in holding said assessments valid, rendered the said Sections of the said Statute repugnant to the 14th Amendment of the Constitution of the United States, de-[fol. 202a] priving appellants of their property without due process of law and denying the appellants equal protection of the laws.

2. The judgment of the Court of Errors and Appeals of the State of New Jersey was erroneous and illegal in affirming the judgment of the New Jersey Supreme Court, and in holding valid the assessments for personal property taxes for the year 1935, levied by the City of Newark against the intangible personal property of appellants, constituting appellants' capital stock paid in and accumulated surplus, under Sections 202, 301, 305 and 307 of Chapter 236 of the Session Laws of 1918 of New Jersey (Revised Statutes of New Jersey of 1937, Sections 54:4-1, 54:4-9 and 18 and 54:4-22), because upon the assessing and taxing date, October 1, 1934, said intangible personal property was, and at all times has been, outside of the jurisdiction of the taxing

district of the City of Newark, and the business situs of appellants and of said taxed intangible personal property was on said date, and at all times has been, located in the City and State of New York, outside of said taxing district, and the said Court in so holding said assessments valid, did administer and apply the said Sections of the said Statute so as to render them repugnant to the 14th Amendment of the Constitution of the United States, depriving appellants of their property without due process of law, and denying the appellants the equal protection of the laws.

The following are the parts of the record which appellants designate as necessary for the consideration of the points upon which appellants intend to rely:

1. The petition for appeal.
2. Assignment of Errors.
3. Order allowing appeal.
4. Citation and bond.
5. The following parts of the printed State of the Case used in the above cases in the New Jersey Court of Errors and Appeals:
 - (a) Pages 1 to 11, both inclusive.
 - (b) Pages 15 to 20, both inclusive.
 - (c) Pages 42 to 58, both inclusive.
 - (d) Judgment of the State Board in the appeal of the Universal Indemnity Insurance Company on page 62, line 10, to page 63, line 30. [fol. 202b].
 - (e) Pages 68 to 87, both inclusive.
 - (f) Pages 137 to 148, both inclusive.
6. Per Curiam opinion of the Court of Errors and Appeals.
7. Judgment of the Court of Errors and Appeals.
8. Proof of acknowledgment of service upon the appellees of copy of the petition, order allowing appeal, assignments of error and statement required by paragraph 1 of Rule 12, and notice directing attention to paragraph 3 of Rule 12.
9. Praecipe.

Respectfully yours, Jehiel G. Shipman, John G. Jackson, Attorneys for and of Counsel with Petitioners-Appellants.

Dated November 1, 1938.

To State Board of Tax Appeals and City of Newark.

[fol. 202c] Service of a copy of the within Statement and Designation is hereby acknowledged this 1st day of November, 1938.

Chas. E. Cook, State Board of Tax Appeals of the State of New Jersey. James F. X. O'Brien, Corp. Counsel, City of Newark.

[fol. 202d] [File endorsement omitted.]

[fol. 203] IN SUPREME COURT OF THE UNITED STATES

STIPULATION OF ADDITIONAL PARTS OF THE RECORD NECESSARY FOR CONSIDERATION OF THE POINTS ON WHICH THE APPELLANTS INTEND TO RELY—Filed November 19, 1938

It is hereby Stipulated and Agreed between the Appellants and the Respondents, by their respective counsel, that the following parts of the printed state of the case used in the above cases in the New Jersey Court of Errors and Appeals, are necessary for consideration of the points upon which the appellants intend to rely, in addition to those parts of the record designated by the appellants in the Statement of Points and Designation of Parts of the Record, filed by appellants on November 2, 1938:

Pages 12 to 14, both inclusive, and pages 59 to 61, both inclusive, and pages 88, 111 and 112, of the printed state of the case used in the New Jersey Court of Errors and Appeals.

Dated November 12, 1938.

Jehiel G. Shipman, Attorney for and of Counsel with Appellants. James F. X. O'Brien, Attorney for and of Counsel with Respondent, City of Newark. State Board of Tax Appeals of the State of New Jersey, by Chas. E. Cook, Secretary.

[fol. 204] [File endorsement omitted.]

Endorsed on cover: File No. 42,941. New Jersey, Court of Errors and Appeals. Term No. 456. Universal Insurance Company and Universal Indemnity Insurance Company, appellants, vs. State Board of Tax Appeals of the State of New Jersey and The City of Newark. Filed November 2, 1938. Term No. 456, O. T., 1938.

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